

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION**

JACKSON WELLS, as Personal
Representative for the Estate of THOMAS
E. WELLS, deceased; and JUDITH
HEMPHILL, as Personal Representative for
the Estate of JOYCE H. WALDER,
deceased,

Plaintiffs,

v.

BNSF RAILWAY COMPANY, et al.,

Defendants.

CV-21-97-GF-BMM

ORDER

INTRODUCTION

Plaintiffs Jackson Wells, as Personal Representative for the Estate of Thomas E. Wells, deceased (“Wells”), and Judith Hemphill as Personal Representative for the Estate of Joyce H. Walder, deceased (“Walder”) (collectively “Plaintiffs”) filed a motion to quash Burlington Northern Santa Fe’s (“BNSF”) subpoena of Brad Black, MD (“Dr. Black”) on January 17, 2024. (Doc. 231.) BNSF opposes Plaintiffs’

motion. (Doc. 231.) Dr. Black, a nonparty, filed an objection to and motion to quash the subpoena issued by BNSF in this case on January 26, 2024. (Doc. 239.) BNSF opposes Dr. Black's motion. (Doc. 245.) The Court conducted a motion hearing on February 26, 2024.

ORDER

Accordingly, **IT IS ORDERED:**

1. Plaintiffs' motion to quash BNSF's subpoena of Dr. Black, or alternatively for a protective order (Doc. 231) is **DENIED**.
2. Dr. Black's objection to and motion to quash trial subpoena issued by BNSF Railway Company (Doc. 239) is **DENIED**.
3. Dr. Black may be deposed for a period not to exceed two hours in total for all parties. BNSF shall have one hour to depose Dr. Black. Plaintiffs and Dr. Black's counsel shall then have one hour collectively to depose Dr. Black.
4. Dr. Black may be asked questions about the following topics during his deposition:
 - a. CARD records concerning Plaintiff Walder;
 - b. His time as the Lincoln County Health Officer and his personal knowledge of the danger presented by vermiculite and asbestos contained therein;
 - c. Research studies co-authored by Dr. Black, titled as follows:

- i. Peipins LA, Lewin M, Campolucci S, Lybarger JA, Miller A, Middleton D, Weis C, Spence M, Black B, Kapil V. Radiographic abnormalities and exposure to asbestos-contaminated vermiculite in the community of Libby, Montana, USA. Environ Health Perspect; 111(14):1753-59;
 - ii. Whitehouse AC, Black CB, Heppe MS, Ruckdeschel J, Levin SM. Environmental exposure to Libby Asbestos and mesotheliomas. American Journal of Industrial Medicine, D01 10.1002/ajim.20620.; and
 - iii. Cohort studies conducted by Dr. Black of which he has personal knowledge or experience.
5. All potential objections to Dr. Black's deposition testimony will be preserved until after the deposition is concluded. The parties are ordered to indicate that all potential objections shall be preserved at the outset of Dr. Black's deposition. The parties are not to raise objections during Dr. Black's deposition to maximize the limited time granted.
6. The parties are ordered to file any motions concerning objections to Dr. Black's deposition testimony within seven days of Dr. Black's deposition being taken. Such objection motions shall be filed contemporaneously.

DATED this 26th day of February, 2024.

A handwritten signature in blue ink, reading "Brian Morris". The signature is written in a cursive style with a large initial "B" and a long horizontal stroke at the end.

Brian Morris, Chief District Judge
United States District Court